

# AKTUELLE RECHTSENTWICKLUNG

## Forthcoming Legislation

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### I. ACCESS TO INFORMATION

The long-awaited Law on Access to Information is about to be enacted. The bill has been endorsed by the Lower House and is expected to become law after going through the Upper House during the current session of the Diet.

Discussions on the enactment of such a law have been going on for over two decades. While local governments, including 47 prefectures and the Tokyo Metropolitan Area, have enacted local regulations on access to information, at the national level, the government was rather slow in responding. It was only in 1998 that a draft law on access to information was submitted to the Diet.

The goal of the Law is to encourage disclosure of information and enhance accountability of the government by providing for the right of the people to request disclosure of information in possession of government agencies. Documents in this context include electro-magnetic records. Agencies covered by this prospective law include ministries, the Cabinet Office, committees and the Government Accounting Office. Any person, including foreign nationals, is entitled to request disclosure of documents from these agencies. Courts and the Diet are excluded. Statutory agencies are not covered either, but will eventually come under this Law in two years' time from its taking effect.

However, not all government information is accessible. Exceptions include information on individuals through which a specific individual can be identified and information on juridical persons, which, if disclosed, may harm their legitimate interests. There are also exceptions on grounds of national security and the maintenance of public order. In addition, information on the internal or mutual discussion of government agencies and local governments which may affect a free and frank exchange of views or appropriate decision-making as well as information on the activities or business of government or local government agencies, which may affect the appropriate implementation of such activities or business, is exempted.

Access can be denied without disclosing whether the document in question is in possession of the agency or not. The decision not to disclose information is subject to judicial review.

Once the Law is enacted, it is scheduled to take effect in the year 2001. The Law will be reviewed after four years of the date of its taking effect.

## II. JUVENILES

The Law on Juveniles, which provides, *inter alia*, for the procedure for adjudicating juvenile offenders has been under review, reflecting the concerns of the general public over the increase and intensification of juvenile crimes. The current Law was enacted in 1948, modelled after the US system at that time. In principle, juvenile offenders are tried at the family court; as an exception, juveniles over the age of 16, who have committed a serious crime, can be tried at the district court. The family court procedure is designed for the re-education and rehabilitation of juvenile offenders and, therefore, excludes the participation of public prosecutors. In recent years, there has been growing criticism of this approach.

The Legislative Advisory Council attached to the Ministry of Justice reached the conclusion in 1998 that public prosecutors should be allowed to take part in certain kinds of juvenile cases, such as cases involving an offence which is punishable by three years' imprisonment. Whether the public prosecutor should take part or not is within the discretion of the family court. In cases where the victim has died, in principle, the public prosecutor is entitled to participate.

The government prepared a bill on the basis of the opinion of the Legislative Advisory Council and submitted it to the Diet in March. It should be added that the bill also provides for the assignment of state-appointed defence counsel to juveniles. This hitherto was only available to non-juvenile offenders.

There is also a proposal to raise the minimum age for criminal responsibility. Currently, only those who are over 16 years of age are pursued for criminal responsibility. Some people propose to lower this age to 14, but this proposal is unlikely to have universal support. Proponents of such views are planning to submit a private bill to the Diet.

## III. PRIVATE FINANCE INITIATIVE

The Law on Private Finance Initiative is to be enacted in the current session of the Diet. This system of financing large scale projects is modelled after the English system. However, the idea of shifting the entire risk of the project from the government to the private sector is new to Japan. There are views that the system which is to be introduced and implemented in Japan will be quite different from the original English system.

The enactment of a "consumers contract law", which sets out basic rules covering the process of concluding consumers contracts and their contents, was proposed by the Economic Planning Agency in 1996. An advisory council to the Agency published the final report on this matter in January 1999. The government, however, decided not to submit a bill to the current session of the Diet, ostensibly due to the need for further discussions with various sectors of the industry. The Agency is planning to submit the bill in the year 2000.

#### IV. VARIOUS

There are some other matters on which legislative measures are expected to be taken.

Firstly, reform of the system of guardianship as provided in the General Part of the Civil Code is now being contemplated. The gist of the reform is reform of the current system of "incompetence". At present, if a person loses the capability of making judgements, he or she can be declared an "incompetent" and have a guardian assigned. The new system allows a person to appoint the guardian before his or her capability to make judgements decline. In addition, a new system which can be used by those who suffer from a mild defect in their capability to make judgements will be introduced. Furthermore, under the current system, the declaration of incompetence or quasi-incompetence is entered into the civil register. This system will be abolished.

The Legislative Advisory Council submitted its opinion to the Minister of Justice in 1998. The government is expected to submit a bill to this session of the Diet; the reform is to take effect by the year 2000.

Also a comprehensive review of the bankruptcy system is now under way. The current system is insufficient in various aspects, including transnational bankruptcy. In 1998, the Ministry of Justice published a list of topics which should be discussed in this review. Although a full scale reform may take several years, the Ministry has decided to proceed first with the reform of the Composition Law and the corporate re-organisation system to be completed in 1999. While the current Corporate Reorganisation Law is aimed at the restoration of a large joint-stock company, the introduction of a new system aimed at the rehabilitation of small and medium-sized companies is being discussed.

In the area of Commercial Law, the Ministry published a document in 1998 inviting comments from interested parties on the reform of the system regarding the relations between the parent company and its subsidiaries. This issue has become particularly important in the light of the 1997 amendment to the Anti-Monopoly Law which liberalised holding companies.

In civil procedure, after the enactment of the new Code of Civil Procedure, the remaining problem is the reform of arbitration law. At present, provisions on arbitration date back to the last century and are thought to be obsolete in the light of increasing use of arbitration in international transactions. The Legislative Advisory Council has set up a study group on the law of arbitration and the first stage of the work (comparative studies of foreign legislation) was completed in 1998.